

Hearing Date and Time: January 27, 2010 at 2:00 p.m.

CULLEN AND DYKMAN LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
(516) 357-3700
Matthew G. Roseman, Esq. (MR 1387)
C. Nathan Dee, Esq. (CD 9703)

Counsel to Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

GLOBAL CONTAINER LINES LTD., et al.,	Case Nos. 09-78585 (AST)
	09-78584 (AST)
	09-78589 (AST)
	09-78586 (AST)
	09-78587 (AST)
	09-78588 (AST)
	09-78590 (AST)

Debtors.

**REPLY TO RESPONSE OF SEACASTLE CONTAINER
LEASING LLC TO DEBTORS MOTION TO REJECT SEACASTLE CONTAINER
AGREEMENTS**

TO THE HONORABLE ALAN S. TRUST,
UNITED STATES BANKRUPTCY JUDGE:

Global Container Lines Ltd., et al., Debtors and Debtors-in-Possession in the above-captioned bankruptcy cases (the “Debtors”)¹, by their attorneys Cullen and Dykman LLP, submit this reply to the response of Seacastle Container Leasing LLC (“Seacastle”) to the Debtors’ motion to reject certain container leasing agreements with Seacastle. In further support thereof, the Debtors allege as follows:

INTRODUCTION

¹ The Debtors in these cases are: Global Container Lines Ltd., Shiptrade, Inc., GCL Shipping Corp., Redstone Shipping Corp., Gilmore Shipping Corp., Global Progress, LLC and Global Prosperity, LLC.

1. On November 10, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11, United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of New York.

2. The Debtors remain in possession of their property and continue in the operation and management of their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. By Order dated November 17, 2009, the Court authorized the joint administration of the Debtors’ chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

4. On December 7, 2009, the United States Trustee appointed an official committee of unsecured creditors in these cases.

BACKGROUND

5. Prior to the Petition Date, the Debtors had entered into certain agreements (the “Agreements”) for leasing storage containers from Seacastle.²

6. On December 7, 2009, Seacastle filed a motion for adequate protection of its interest in certain storage containers (the “Containers”).

7. On December 18, 2009, the Debtors filed a response to Seacastle’s motion for adequate protection asserting, among other things, that the Agreements were disguised financing agreements.

8. After a hearing on December 22, 2009 on Seacastle’s motion and the Debtors’ response, the Debtors initiated an adversary proceeding against Seacastle for a determination of the parties rights under the Agreements.

² A detailed description of the parties contractual relationship (along with copies of the relevant Seacastle agreements) is set forth in the Debtors’ response to Seacastle’s motion for turnover dated December 18, 2009 [docket no. 66].

9. On or about January 11, 2010, the Debtors filed their motion to reject the Agreements (the “Motion”).

10. On January 20, 2010, Seacastle filed its response (the “Response”) to the Debtors’ Motion.

11. On or about January 23, 2010, the Debtors dismissed their adversary proceeding against Seacastle because the relief sought by the Debtors in the Motion essentially rendered the adversary proceeding moot.

SEACASTLE RESPONSE

12. In its Response³, Seacastle seeks: (i) a declaration by the Court that the Debtors have no right to reject the agreements subject to the motion because Seacastle had already terminated the Agreements prior to the Petition Date; (ii) a direction by the Court that Global cease using Seacastle’s Containers and immediately return such containers to Seacastle; and (iii) a direction by the Court compelling the Debtors’ immediate disclosure of the locations of Seacastle’s containers along with an accounting of their use by the Debtors since the Petition Date.

13. Additionally, in its Response, Seacastle also asserts an administrative claim for damages against the Debtors estates in an unspecified amount based upon an alleged tort claim against the Debtors for conversion.

DEBTORS’ REPLY

14. The Debtors assert that issues of fact exist regarding whether or not Seacastle properly terminated the Agreements prior to the Petition Date that would require an evidentiary hearing. Accordingly, the Court should deny Seacastle’s request that it make a determination

³ In its prayers for relief in the Response, Seacastle reasserts a request for the same relief that it had previously sought in its original motion for adequate protection.

regarding its alleged pre-petition termination of the Agreements until after the Court has held an evidentiary hearing on the matter.

15. The Debtors also assert that Seacastle's request for a declaration of its rights under the Agreement is procedurally defective as such a request should be made brought pursuant a complaint initiating an adversary proceeding under Federal Rule of Bankruptcy Procedure 7001(2).

16. Given that the Debtors' seek to reject the Agreements pursuant to the terms of the Motion, Seacastle's request that the Court direct that the Debtors to cease using their containers is now moot.⁴

17. The Debtors should not be compelled to immediately return Seacastle's containers to Seacastle upon the Debtors rejection of the Agreements because to hold otherwise would be to compel the Debtors to perform their contractual obligations to Seacastle after the Debtors had already rejected the Agreements. Such a result is contrary to the terms of Section 365 (p) of the Bankruptcy Code that provides after rejection the Containers are no longer property of the Debtors' estates and the automatic stay is immediately lifted to enable Seacastle to regain possession of its personal property. The Debtors should not be forced to expend estate funds to provide for the return of non debtor property to non debtor third parties. Furthermore, Sections 365 (g) and 502 of the Bankruptcy Code provide a remedy for Seacastle in the form of a rejection claim for damages that it may assert against the Debtors based upon the Agreements including, but not limited to, any costs incurred by Seacastle when retrieving is containers.

18. The Debtors have provided Seacastle with the current location of its containers

⁴ Approximately fifty five of Seacastle's containers are now enroute to Zanzibar and should arrive no later than January 30, 2010. The Debtors intend to pay Seacastle the per diem rate for any containers actually used by the Debtors to transport cargo during the post-petition period as an administrative expense pursuant to the terms of a consensual plan of reorganization.

contemporaneously with the filing of this Reply via electronic mail from Debtors counsel to counsel for Seacastle. Consequently, the Court does not need to compel the Debtors to provide further information regarding the location of its containers. The Debtors will work with Seacastle, as they have worked with all their equipment lessors, to facilitate the return of the Containers as long as the Debtors are not required to expend estate funds to do so.

19. Finally, in its Response, Seacastle seeks to assert an administrative claim against the Debtors for an unspecified amount based upon the Debtors' alleged conversion of Seacastle's property after the Petition Date. As support for its alleged administrative claim, Seacastle cites to a number of cases based upon the Supreme Court's decision in *Reading Company v. Brown*, 391 U.S. 471 (1968) (See Response, p. 2) that are inapposite to the facts and issues presented to the Court in the instant matter.

20. In fact, one of the cases Seacastle relies on, *SunTrust Bank v Roberson* (In re Baseline Sports, Inc.), 393 B.R. 105, 130 (E.D. Va 2008) supports the Debtors position that Seacastle does not hold an administrative claim against the Debtors estate based upon an alleged tort because Seacastle is not the type of "innocent" third party for whom the Reading exception was designed since Seacastle is one of the Debtors' creditors for whose benefit the Debtors are attempting to reorganize. 393 B.R. at 131 (citations omitted).

21. Additionally, the Debtors assert that (i) the Agreements do not represent a post-petition transaction with the Debtors estates because they were not terminated by Seacastle prior to the Petition Date and (ii) Seacastle's alleged tort claim did not provide a benefit to the Debtors' estates that would justify Seacastle's claim for an administrative expense pursuant to Section 503(b) of the Bankruptcy Code. See, *NLRB v. Bildisco v. Bildisco*, 465 U.S. 513, 531 (1984).

22. The Debtors have used seventy five of Seacastle's containers during the post-petition period to transport cargo. Accordingly, the Debtors agree that Seacastle has an administrative claim against the Debtors' estates in the amount of approximately \$4,463.46 which represents the per diem cost for each of the Containers used by the Debtors for the periods they were used by the Debtors. A breakdown of the dates, containers and rental costs for each of the Containers used by the Debtors during the post-petition period are attached hereto as Exhibit A.

WHEREFORE, the Debtor requests that the Court deny the relief sought by Seacastle in its Response, grant the Debtors' Motion and grant the Debtors such other and further relief as the Court deems just and proper.

Dated: Garden City, New York
January 25, 2010

CULLEN AND DYKMAN LLP
Proposed Counsel for Debtors and Debtors in
Possession

By /s/ C. Nathan Dee
Matthew G. Roseman (MR1387)
C. Nathan Dee (CD 9703)
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
(516) 296-9106

EXHIBIT A

No.	Contract	Container No.	TP	Pickup date	Estimated MTY return date	Rental	Rental Days	Amount	CURRENT LOCATION
1	IP 3507	GCIU205020	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
2	IP 3507	GCIU205081	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
3	IP 3507	GCIU205105	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
4	IP 3507	GCIU205158	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
5	IP 3507	GCIU205169	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
6	IP 3507	GCIU205230	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
7	IP 3507	GCIU205233	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
8	IP 3507	GCIU205252	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
9	IP 3507	GCIU205266	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
10	IP 3507	GCIU205282	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
11	IP 3507	GCIU205355	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
12	IP 3507	GCIU205362	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
13	IP 3507	GCIU205368	20'DV	22-Dec-09	05-Feb-10	\$ 1.62	45	\$ 72.90	Mombasa
14	IP 3531	GCIU205427	20'DV	22-Dec-09	05-Feb-10	\$ 1.14	45	\$ 51.30	Mombasa
15	IP 3531	GCIU205436	20'DV	22-Dec-09	05-Feb-10	\$ 1.14	45	\$ 51.30	Mombasa
16	IP 3531	GCIU205440	20'DV	22-Dec-09	05-Feb-10	\$ 1.14	45	\$ 51.30	Mombasa
17	IP 3531	GCIU205455	20'DV	22-Dec-09	05-Feb-10	\$ 1.14	45	\$ 51.30	Mombasa
18	IP 3531	GCIU205498	20'DV	22-Dec-09	05-Feb-10	\$ 1.14	45	\$ 51.30	Mombasa
19	IP 3531	GCIU205530	20'DV	22-Dec-09	05-Feb-10	\$ 1.14	45	\$ 51.30	Mombasa
20	IP 3531	GCIU205538	20'DV	22-Dec-09	05-Feb-10	\$ 1.14	45	\$ 51.30	Mombasa
21	IP 3507	GCIU205001	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
22	IP 3507	GCIU205006	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
23	IP 3507	GCIU205010	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
24	IP 3507	GCIU205018	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
25	IP 3507	GCIU205019	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
26	IP 3507	GCIU205048	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
27	IP 3507	GCIU205057	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
28	IP 3507	GCIU205066	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
29	IP 3507	GCIU205073	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
30	IP 3507	GCIU205086	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
31	IP 3507	GCIU205100	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
32	IP 3507	GCIU205111	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
33	IP 3507	GCIU205134	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
34	IP 3507	GCIU205139	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
35	IP 3507	GCIU205143	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
36	IP 3507	GCIU205156	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
37	IP 3507	GCIU205157	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
38	IP 3507	GCIU205161	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
39	IP 3507	GCIU205168	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
40	IP 3507	GCIU205182	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
41	IP 3507	GCIU205195	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
42	IP 3507	GCIU205199	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
43	IP 3507	GCIU205207	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
44	IP 3507	GCIU205225	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
45	IP 3507	GCIU205227	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
46	IP 3507	GCIU205238	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
47	IP 3507	GCIU205242	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
48	IP 3507	GCIU205256	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
49	IP 3507	GCIU205268	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
50	IP 3507	GCIU205279	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
51	IP 3507	GCIU205280	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
52	IP 3507	GCIU205293	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
53	IP 3507	GCIU205299	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
54	IP 3507	GCIU205303	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
55	IP 3507	GCIU205316	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
56	IP 3507	GCIU205325	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
57	IP 3507	GCIU205336	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
58	IP 3507	GCIU205369	20'DV	22-Dec-09	30-Jan-10	\$ 1.62	39	\$ 63.18	Zanzibar
59	IP 3531	GCIU205405	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
60	IP 3531	GCIU205415	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
61	IP 3531	GCIU205425	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
62	IP 3531	GCIU205466	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
63	IP 3531	GCIU205469	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
64	IP 3531	GCIU205484	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
65	IP 3531	GCIU205485	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
66	IP 3531	GCIU205505	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
67	IP 3531	GCIU205512	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
68	IP 3531	GCIU205532	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
69	IP 3531	GCIU205534	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
70	IP 3531	GCIU205537	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
71	IP 3531	GCIU205543	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
72	IP 3531	GCIU205567	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
73	IP 3531	GCIU205577	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
74	IP 3531	GCIU205581	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar
75	IP 3531	GCIU205591	20'DV	22-Dec-09	30-Jan-10	\$ 1.14	39	\$ 44.46	Zanzibar

Total ➤ \$ 4,463.46 ↵